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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,535	10/31/2003	Lee A. Nosbisch	NR8675US	2703
22203	7590	09/19/2005	EXAMINER	
KUSNER & JAFFE HIGHLAND PLACE SUITE 310 6151 WILSON MILLS ROAD HIGHLAND HEIGHTS, OH 44143			KASTLER, SCOTT R	
		ART UNIT		PAPER NUMBER
		1742		

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/699,535	NOSBISCH, LEE A.
	<b>Examiner</b> Scott Kastler	<b>Art Unit</b> 1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 July 2005.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4-13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4-13 and 15-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-13 and 15-22 are rejected under 35 U.S.C. 102(b) as being anticipated by German'033. German'033 teaches a lining including a set of starter bricks (refractory components) for a ladle or converter which is to be employed for starting a spiral brick lining, where the refractory components (a-o), which include at least 4 in the set, have a planar bottom surface, an upper surface which is flat and an arched upper surface, end surfaces dimensioned to fit together to form a ramp surface having a leading end (h) and trailing end (a) and where the trailing end ramp surface meets the relative definition of “nearly horizontal”, thereby showing all aspects of the above claims, since the manner in which the claimed components are manufactured (cast or pressed) without any showing of a material difference in the final article itself, also cannot be relied upon to fairly further limit claims to the apparatus or article itself.

See MPEP 2113 for example.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over either of Erny or Erny et al. Each of Erny and Erny et al teach a lining including a set of starter bricks (refractory components) for a ladle which could be employed for starting a spiral brick lining if desired, where the refractory components (30), which include at least 4 in the set, have a planar bottom surface, an upper surface, end surfaces (33, 34) dimensioned to fit together to form a ramp surface having a leading end (40) and trailing end (41) and where the trailing end ramp surface meets the relative definition of “nearly horizontal”, thereby showing all aspects of the above claims except the use a specifically shaped upper surface, since both the actual manner or method of use of the claimed refractory set for the starting of a spiral lining (rather than the leveling use cited by both of Erny and Erny et al) cannot be relied upon to fairly further limit claims to the apparatus itself where, as in the instant case, the applied prior art apparatus could perform the claimed function. See MPEP 2114, 2115 and *In re Casey*, 152 USPQ 235; and the manner in which the claimed components are manufactured (cast or pressed) without any showing of a material difference in the final article itself, also cannot be relied upon to fairly further limit claims to the apparatus or article itself. See MPEP 2113 for example. However, since the upper surface of each of Erny and Erny et al operate in substantially the same manner with substantially the same stated effect as the instantly claimed upper surface, motivation to alter the shape of the upper surface to any desired shape or contour, including the “arched” or “bowed” upper surface shapes instantly claimed, would have been a modification obvious to one of ordinary skill in the art at the time the invention was made, since it has been well settled that where the applied prior art teaches a claimed component, motivation to alter the shape or form of the component without altering the effect or operation of the component would have been a

modification obvious to one of ordinary skill in the art at the time the invention was made. See *In re Dailey*, 149 USPQ 47 and MPEP 2144.04 IV B.

Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williamson et al. Williamson et al teaches a ladle lining including courses of refractory brick (28) with a starter set (27) of refractory bricks between,(see col. 9 lines 15-25 for example) where the starter set is formed of a set of at least 4 refractory bricks and form a contoured ramp with leading and trailing ends dimensioned so that adjacent ends mate with each other, thereby showing all aspects of the above claims except the instantly recited upper surface shape. However, since the upper surface of Williamson et al operates in substantially the same manner with substantially the same stated effect as the instantly claimed upper surface, motivation to alter the shape of the upper surface to any desired shape or contour, including the "arched" or "bowed" upper surface shapes instantly claimed, would have been a modification obvious to one of ordinary skill in the art at the time the invention was made, since it has been well settled that where the applied prior art teaches a claimed component, motivation to alter the shape or form of the component without altering the effect or operation of the component would have been a modification obvious to one of ordinary skill in the art at the time the invention was made. See *In re Dailey*, 149 USPQ 47 and MPEP 2144.04 IV B.

*Response to Arguments*

Applicant's arguments filed on 7/27/2005 have been fully considered but they are not persuasive. Applicant's argument that each of Erny and Erny et al are not directed to a set of bricks for starting a spiral lining, but rather for a set of leveling bricks is not persuasive because

as stated in the above rejection, the manner or method of use of the claimed refractory set for the starting of a spiral lining (rather than the leveling use cited by both of Erny and Erny et al) cannot be relied upon to fairly further limit claims to the apparatus itself where, as in the instant case, the applied prior art apparatus could perform the claimed function. See MPEP 2114, 2115 and *In re Casey*, 152 USPQ 235.

Applicant's arguments with respect to claims 1, 2, 4-13 and 15-22 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

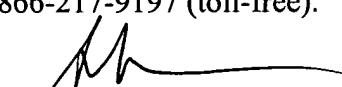
Applicant's amendment (the addition of a specific upper surface contour or profile) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (571) 272-1243. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Scott Kastler  
Primary Examiner  
Art Unit 1742

sk